UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
SAMANTHA ANGELINA MCCOMBS,	)	CASE NO. 06-60411 JPK
	)	Chapter 7
Debtor.	)	

ORDER DENYING MOTION TO ALTER OR AMEND
DISMISSAL ORDER ("MOTION")

The Motion was filed on October 22, 2008. It requests "the Court to alter or amend the dismissal order rendered herein on October 21, 2008" based upon the grounds that "the Debtor has been attempting to complete her Financial Management Certificate; however had been unsuccessful as she doesn't own a computer and was affected by the recent flooding that inundated Lake County, Indiana".

It is clear from the above-quoted provisions of the Motion that it has been filed pursuant to Fed.R.Bankr.P. 9023/Fed.R.Civ.P. 59. Thus the standards against which the Motion is to be measured are those applicable to a motion to alter or amend a judgment pursuant to Rule 59 of the Federal Rules of Civil Procedure.

But before we discuss the absolute insufficiency of this Motion under Fed.R.Civ.P. 59(a), let's discuss the total non-compliance with N.D.Ind.L.B.R. B-9023-1(a), which requires that a motion pursuant to Fed.R.Bankr.P. 9023 "shall be accompanied by a separate supporting brief and any appropriate affidavits or other materials in support thereof". No supporting brief was submitted, and no affidavits were submitted to support the naked allegations of the Motion. For that reason alone, the Motion can be denied.

But let's go further. Fed.R.Civ.P. 59(a) states in pertinent part that a "new trial may be granted to all or any of the parties on all or any part of the issues . . . (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States".

The proper basis for a Rule 59 motion was stated in *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006), and the reasons why the Motion fails to state a case under Rule 59 are also addressed in the following excerpt from that decision:

> Altering or amending a judgment under Rule 59(e) is permissible when there is newly discovered evidence or there has been a manifest error of law or fact. *See Bordelon v. Chicago Sch. Reform Bd. of Trs.,* 233 F.3d 524, 529 (7th Cir.2000). Vacating a judgment under Rule 60(b) is permissible for a variety of reasons including mistake, excusable neglect, newly discovered evidence, and fraud. *See* Fed.R.Civ.P. 60(b). While the two rules have similarities, "Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances." *Karraker v. Rent-A-Center, Inc.,* 411 F.3d 831, 837 (7th Cir.2005) (quotation omitted). Rule 59(e), by contrast, requires that the movant "clearly establish" one of the aforementioned grounds for relief. *Romo v. Gulf Stream Coach, Inc.,* 250 F.3d 1119, 1122 n. 3 (7th Cir.2001). Regardless, we review decisions under each rule only for abuse of discretion. *See id.*
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> Because Boyd filed the motion within ten days of the entry of judgment, the motion could procedurally qualify as a Rule 59(e) motion. *See* Fed.R.Civ.P. 59(e); *Ball v. City of Chicago,* 2 F.3d 752, 760 (7th Cir.1993) (citing *Charles v. Daley,* 799 F.2d 343, 347 (7th Cir.1986)). The district court, however, evaluated Boyd's motion as a Rule 60(b) motion because "the only arguable basis for relief presented in the motion is Rule 60(b)'s 'excusable neglect.' " This assessment is correct. What is more, Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures," which is precisely what Boyd attempts in the motion here. *Bordelon,* 233 F.3d at 529 (quotation omitted). Boyd's motion is simply a plea for the district court to excuse his neglect in prosecuting this case; as such, the motion advances no grounds to support Rule 59(e) relief.

Unlike the motion in *Harrington, supra*, the debtor's Motion in this case is clearly one made pursuant to Fed.R.Bankr.P. 9023/Fed.R.Civ.P. 59. The Motion, and the record behind it, fail to establish that there is any newly discovered evidence, or that there has been a manifest error or law or fact, and thus based upon the criteria for a Rule 9023/Rule 59(a) motion stated in *Harrington, supra*, the Motion fails.

Let's dig a little deeper. This bankruptcy case was filed on March 13, 2006 as a Chapter

13 case. The debtor filed a motion to convert the case from Chapter 13 to Chapter 7 on April 10, 2008, which was granted automatically pursuant to the provisions of 11 U.S.C. § 1307(a) by order entered on April 16, 2008. Thus, the case became a Chapter 7 case on April 16, 2008. By administrative order entered on April 16, 2008, the first meeting of creditors pursuant to 11 U.S.C. § 341 was scheduled for May 21, 2008 at 9:30 a.m. (docket record entry #61). Interim Rule 1007(c), adopted by the United States Bankruptcy Court for the Northern District of Indiana, requires that in a chapter 7 case, "the debtor shall file the statement required by subdivision (b)(7) within 45 days after the first date set for the meeting of creditors under § 341 of the Code". By its Order Amending Interim Bankruptcy Rule 1007(c), entered on April 17, 2006, the United States Bankruptcy Court for the Northern District of Indiana altered the 45-day period provided by Interim Rule 1007(c) to a 60-day period. The first meeting of creditors with respect to the Chapter 7 case was set by the April 16, 2008 order for May 21, 2008. Thus, the statement required by Interim Rule 1007(b)(7) – the "statement regarding completion of a course in personal financial management" – was required to be filed by July 20, 2008 in this case. July 20, 2008 came and went, and the required statement was not filed. On October 21, 2008, the court entered an order closing the case without the entry of discharge because the required statement had not been filed.[1]

On October 22, 2008, the debtor, by counsel, filed the Motion. On October 23, 2008, the required certification of completion of a course in personal financial management was filed.

The certificate filed on October 23, 2008 was due to be filed by no later than July 20, 2008. Nothing transpired in this case with respect to any request by the debtor for an extension of time to file the certificate until the case was closed on October 22. During the three

[1] The Motion characterizes the court's order entered on October 21, 2008 as an order of dismissal of the case. That is an erroneous designation of the order. The order did not dismiss the case; rather, the order merely closed the case without the entry of a discharge for the debtor.

additional months during which the debtor could have filed the certification, nothing was done to request an extension of time to file the certification or to comply with the debtor's obligations to file the certification. This delay, without demonstratable excuse, would result in denial of the Motion.

We now come to the grounds stated in the Motion itself, which are essentially grounds which would be potentially assertable under Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) but for the fact that the Motion is so clear in its assertion that it is brought pursuant to Fed.R.Bankr.P. 9023/Fed.R.Civ.P. 59(a). Let us even assume that the Motion is re-filed under Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b). The grounds asserted for the debtor's failure to file the required certification in a timely manner are that the debtor "doesn't own a computer" and that the debtor "was affected by the recent flooding that inundated Lake County, Indiana".

With respect to the asserted ground that the "debtor doesn't own a computer", the simple answer – apart from not explaining why the debtor couldn't have driven to an authorized provider's office to obtain the required counseling – is that the debtor's counsel does have a computer which could access a provider's site. The court expects counsel for debtors in Chapter 7 cases to arrange for their clients to come to their offices to utilize their computer network to obtain the necessary certification – anything less is an abrogation of the professional responsibility of a Chapter 7 attorney to a Chapter 7 debtor who cannot otherwise obtain the certification. This asserted ground holds no water under any possible theory.

The next ground is that the debtor's ability to obtain the required certification by July 20, 2008 was affected by the "recent flooding that inundated Lake County, Indiana". There was no flooding in Lake County, Indiana that precluded anything during the period that ended July 20, 2008, and in fact, during the period that ended sometime in early October of 2008. The debtor had essentially four months from the date the case was converted from Chapter 13 to Chapter 7 to obtain the required counseling, totally unaffected by flooding concerns. This ground is

disingenuous and would present no basis for relief under Rules 9024/60(b).

From the foregoing, it is obvious that the Motion states no grounds for its allowance. However, the debtor is not adrift (pun intended). All that has to happen is that the debtor's counsel file a motion to re-open the case, pay the re-opening fee, and then obtain the debtor's discharge – in view of the fact that the required certification has now been filed as docket record entry #78. All of the machinations of the debtor's counsel appear to be designed to avoid a re-opening fee of $260.00, and given counsel's billing rate, it has probably cost the debtor significantly more than the re-opening fee for the debtor's counsel to pursue the course which he has chosen to follow.

Based upon the foregoing, the court finds that the Motion must be denied.

IT IS ORDERED that the Motion is denied.

Dated at Hammond, Indiana on November 26, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee